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**Poudre Valley Rural Electric Association, Inc. and
International Brotherhood of Electrical Workers,
Local 111, AFL-CIO. Case 27-CA-167119**

February 20, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
AND EMANUEL

On February 27, 2017, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to furnish the Union with requested relevant information, we do not rely on *Lithographers Local One-L (Metropolitan Lithographers Assn.)*, 352 NLRB 906 (2008), cited by the judge, a decision that issued at a time when the Board lacked a quorum. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

Among other findings, the judge found that deferring the dispute at issue here to arbitration was inappropriate. Chairman Kaplan and Member Emanuel recognize that under extant precedent, information-request disputes are not deferrable to arbitration, see, e.g., *General Dynamics Corp.*, 268 NLRB 1432 (1984). Although they may be willing to consider exceptions to this doctrine in a future appropriate case, the Respondent has made no valid argument for doing so in this case.

On March 24, 2017, the Respondent moved to reopen the record to introduce evidence regarding events that occurred after the close of the hearing. The Respondent asserts that (1) in February 2017, the Union posted the administrative law judge's decision in this case on a bulletin board located on the Respondent's premises, and (2) on February 23, 2017, the Union posted an article online asking employees to update their beneficiary contact information. The Respondent moves to reopen the record to introduce evidence in support of these assertions. We deny the Respondent's motion. First, the evidence the Respondent seeks to introduce would not require a different result. See Board's Rules & Regulations Sec. 102.48(d)(1). That the Union, in February 2017, posted a copy of the judge's decision on a bulletin board on the Respondent's premises and an online article asking employees to update their beneficiary contact information has no bearing whatsoever on

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Poudre Valley Rural Electric Association, Inc., Fort Collins, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

“(a) Furnish to the Union in a timely manner, pursuant to its November 6, 2015 request, a current list of the names, home addresses, and home telephone numbers of all bargaining-unit employees.”

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. February 20, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

whether the Respondent, in 2015, violated Sec. 8(a)(5) and (1) of the Act by refusing to furnish the Union requested relevant information. Second, evidence sought to be introduced on a motion to reopen the record must have been “capable of being presented at the original hearing.” *Rush University Medical Center*, 362 NLRB No. 23, slip op. at 1 fn. 2 (2015), *enfd.* 833 F.3d 202 (D.C. Cir. 2016); see also *Allis-Chalmers Corp.*, 286 NLRB 219, 219 fn. 1 (1987). Here, the evidence the Respondent seeks to introduce dates from February 2017 and could not have been introduced at the original hearing, held in June 2016.

² We clarify that the Respondent is to supply the Union with a current list of unit employees' names, home addresses, and home telephone numbers rather than, as the judge recommended, information in effect at the time of the November 6, 2015 information request. We shall also substitute a new notice to conform to the Order as modified.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
 Choose representatives to bargain with us on your behalf
 Act together with other employees for your benefit and protection
 Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide International Brotherhood of Electrical Workers, Local 111, AFL-CIO (Union) with requested information that is relevant and necessary to its role as bargaining representative of our employees in the following appropriate unit:

All regular full-time employees of the Association included within the following classifications: working foreman, lead lineman, lineman, tree trimmer foreman, lead tree trimmer, tree trimmer, vehicle maintenance technician, ground man, apprentice lineman, apprentice tree trimmer, fleet mechanic, equipment operator, warehouse and plant maintenance foreman, fleet mechanic foreman, lead mechanic, warehouse and vehicle helper, plant and maintenance helper, operations/dispatch clerk, operations administrative assistant, cable locator, customer service representative, and customer service representative lead; excluding all other employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL promptly furnish to the Union a current list of the names, home addresses, and home telephone numbers of all our employees in the bargaining unit set forth above.

POUDRE VALLEY RURAL ELECTRIC
 ASSOCIATION, INC.

The Board's decision can be found at www.nlr.gov/case/27-CA-167119 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Isabel Saveland, Esq. and Daniel J. Michalski, Esq., for the General Counsel.

Raymond M. Deeny, Esq. and Jonathon Watson, Esq. (Sherman & Howard), for the Respondent.

Naomi Perera, Esq. (Buescher Kelman Perera & Turner, PC), for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. The International Brotherhood of Electrical Workers, Local 111, AFL-CIO (Union or Charging Party) filed the underlying unfair labor practice charge against Respondent Poudre Valley Rural Electric Association, Inc. (the "Respondent" or "Employer" or "Association") on January 5, 2016, with amendments to the charge on March 31 and April 5, 2016. After investigation of the charge, the Region 27 Regional Director issued a Complaint and Notice of Hearing on April 5, 2016. The Complaint alleges that the Company violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (the Act), by failing and refusing to furnish the Union with requested unit employees' home addresses and telephone numbers. The Respondent answered the complaint on April 19, 2016, generally denying the critical allegations of the complaint and affirmatively defends on grounds that the current labor agreement imposes no such obligation on it; or, alternatively, if it does, that this matter should be deferred to arbitration. In addition, Respondent maintains that the charge herein is barred by the 6-month limitations rules in Section 10(b) of the Act; and that furnishing the requested information would violate employees' rights and privacy. This case was tried in Denver, Colorado, on June 2, 2016.

FINDINGS OF FACT

Upon the entire record herein,¹ including the briefs from counsel for the General Counsel, Respondent, and the Charging Party, I make the following findings of fact.

I. JURISDICTION

Respondent admitted and I find that it is a State of Colorado corporation with an office and place of business located in Fort Collins, Colorado (Respondent's facility). Respondent is a not-for-profit public utility and electric cooperative that has been

¹ The transcript in this case is mostly accurate, but I correct the transcript (Tr.) as follows: Tr. 69, lines (ll). 9, 12, and 14: "MICHALSKI" should be: "MEISINGER;" Tr. 97, l. 9: "are yes" should be "are not yes;" Tr. 177, l. 23: "it is not, I agree" should be "it is, I agree.;" and Tr. 184, l. 15: "I'm not finding nothing" should be "I'm finding that nothing."

engaged in the retail and/or wholesale supply and transmission of electrical energy to its members who are located in counties in Northern Colorado. During the 12-month period ending March 29, 2016, Respondent, in conducting its operations, derived gross revenues in excess of \$250,000 and purchased and received at its Fort Collins, Colorado facility, goods valued in excess of \$50,000 directly from points outside the State of Colorado. Respondent further admitted and I find that it is an employer engaged in interstate commerce within the meaning of Sections 2(2), (6), and (7) of the Act. (General Counsel Exhibits 1(j) and 1(l).)²

II. LABOR ORGANIZATION

Respondent admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exhs. 1(j) and 1(l).)

III. THE ALLEGED UNFAIR LABOR PRACTICES

Background Facts

Facts and Issues

Since at least the 1970's, the Union has been the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees at its facility in Fort Collins, Colorado. (Tr. 142.) The last agreement between the parties was the October 1, 2013–September 30, 2016 collective-bargaining agreement (CBA). (Tr. 174; GC Exh. 2.) The bargaining unit (the unit) covered by the agreement is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time employees of the Association included within the following classifications: working foreman, lead lineman, lineman, tree trimmer foreman, lead tree trimmer, tree trimmer, vehicle maintenance technician, ground man, apprentice lineman, apprentice tree trimmer, fleet mechanic, equipment operator, warehouse and plant maintenance foreman, fleet mechanic foreman, lead mechanic, warehouse and vehicle helper, plant and maintenance helper, operations/dispatch clerk, operations administrative assistant, cable locator, customer service representative, and customer service representative lead; excluding all other employees and supervisors as defined in the National Labor Relations Act.

In October 2015,³ there were approximately 40–42 bargaining unit employees at Respondent with approximately half or about 22–23 of them being dues-paying members. (Tr. 18–19, 76–77, 172.) The Union has the name, address, and telephone number of the members of the bargaining unit who pay union dues. (Tr. 77.) Similarly, for the other half of the bargaining unit employees who are not dues-paying members, the Union

does not have the names, addresses and telephone numbers of these non-member unit employees at all times.⁴ (Id.) The Union also does not receive information containing the names, addresses, and telephone numbers of new employees immediately after they are hired during the calendar year. The Union represents non-paying unit employees and dues paying member unit employees at all times. (Tr. 76–78.)

The CBA at article 8 is a contractual provision entitled SENIORITY that governs terms for application of seniority.⁵ Among other things related to Seniority and how it is calculated for advancement, demotion, transfers, assignments, etc., this article includes the following language:

Within thirty (30) days after the beginning of each calendar year the Association will post a seniority list for the Association including all employees in the bargaining unit, their classifications, and their date of hiring. Any dispute regarding the seniority posting shall be taken up by the bargaining committee and representatives of the Association within thirty (30) days after this posting.

(GC Exh. 2 at 3.) While each annual Seniority List contains unit employees' names, classifications, and dates of hiring, neither this CBA provision nor the Seniority List it mentions contains or references bargaining unit employees' addresses or telephone numbers. (Tr. 55; GC Exh. 2 at 3.)

Once a year, every January, under section 8 of the CBA, the Respondent provides the Union with a seniority list of unit employees that contains their seniority ranking, name, work classification, and hire date (the "Seniority List") (GC Exh. 2 at 3.)

Article 6 of the CBA provides that "no strikes shall be caused or sanctioned by the Union or its members." (GC Exh. 2 at 2.)

By letter dated March 31, the Union's Business Agent Sean McCarville (McCarville) requested information from Respondent's Chief Executive Officer (CEO) Jeff Wadsworth⁶ (Wadsworth) regarding "Employee List as of 3/31/15" that sought "a complete employee list covered under the CBA to be employee's name, classification, date of hire and last 4 social security number digits." McCarville gave the Respondent a 4/3/15 deadline to provide this info and explained his reasons as: "In an effort to update our records and maintain accurate information" as the "info is essential as we update our records." This information request did not ask for unit employees' home addresses or telephone numbers. (Tr. 93–94; GC Exh. 6(c).)

After receiving the March 31 information request, CEO Wadsworth told Human Resources Director Vinnie Johnson (Johnson) to deny the information request based on privacy confidential concerns that Wadsworth had as well as the request

² Abbreviations used in this decision are as follows: "Tr." for transcript; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "GC Br." for the General Counsel's brief and "R. Br." for the Respondent's brief. Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

³ All dates in 2015 unless otherwise indicated.

⁴ Meisinger's uncontradicted testimony indicates that bargaining unit employees at Respondent are not required to become members of the Union to keep their jobs. Tr. 77.

⁵ *Seniority* is defined as "the state of being older or higher in rank." Webster's II, New Riverside University Dictionary, The Riverside Publishing Co., p. 1062 (2nd Edition, 1988).

⁶ Wadsworth had worked at Respondent for 6 years at the time of hearing also holding positions there of chief financial officer and chief operating officer before becoming CEO in January 2014. Tr. 134.

being outside the time period for supplying this information under the CBA. (Tr. 136.) Wadsworth explained that his personal privacy concerns for Respondent's employees were that in this day and age, cybersecurity is a huge issue in the utility industry which is subject to attack such as in the Ukraine. Id. Wadsworth further opined that he believes that employees' privacy is near and dear to his heart as it is a trust thing between Respondent's management and its employees making sure that the information that employees provide to Respondent is kept under lock and key.⁷ (Tr. 137.)

On April 2, Respondent's Johnson provided McCarville with a Seniority List dated March 31, as an accommodation to McCarville's March 31 Employee List information request. Respondent points out that it provides the Union this same information every January and also that "we cannot provide you with the last 4 digits of employee social security numbers." (Tr. 96; GC Exh. 6(d) and 6(e).)

In June, Richard Meisinger (Meisinger) joined the Union as assistant business agent at Respondent in place of its prior assistant business agent, Timio Archuleta. (Tr. 17, 46.) Meisinger reported to McCarville as business manager for the Union at this time. (Tr. 67.)

Later on October 29, Meisinger arranged to meet with a Respondent's management group comprised of Wadsworth, HR Director Sarah Witherell (Witherell), Chief Operating Officer John Boudierline, and Lisa Wright (Wright). On October 29, the group meets for coffee with Meisinger so he can introduce himself as the new assistant business agent to discuss some issues that Meisinger wanted to bring to the attention of Respondent's management, and to "build a bridge" for open communication between Respondent and the Union. (Tr. 19–20, 88, 96, 116, 137–138.)

At this meeting, Meisinger commented that he is aware that new employees have been hired by Respondent and the Union will be requesting new employee information from the Respondent because Respondent, unlike all other employers Meisinger had worked with previously, was not letting the Union know when new employees were hired so that the Union could follow up with a proper designation for the employee in the Union's records. (Tr. 83–84.) Meisinger typically gives new employee hires a union packet that, among other things, asks them for their address and telephone number. (Tr. 51.) Because Respondent did not immediately communicate when a new hire arrived at Respondent, Meisinger relied ineffectively either on the January seniority list or word of mouth from union stewards at Respondent to find out about newly hired employees. (Tr. 81.)

One example Meisinger raised in the October 29 meeting was he told Respondent's management that he knew that a new lineman, Dan Hanson, had been hired on at Respondent and Hanson transferred his union ticket or card but that the Union

did not have that information as Respondent did not alert the Union to this new hiring as other employers typically did based on Meisinger's prior experience. (Tr. 21, 63, 83.) Meisinger further explained that he needed information from Respondent concerning the new employees because the Union did not know immediately to move Hanson from a construction unit to the bargaining unit at Respondent and this caused confusion of a bargaining unit employee's proper classification in the Union's records. (Tr. 21, 63, 83, 97, 139, 165–166.)

As a result, Meisinger next told Wadsworth and the management group that he believed either under the existing CBA or possibly somewhere else, he had been told that the Union was legally entitled to receive this information concerning new hires, addresses, telephone numbers of bargaining unit employees so Meisinger asked the management group at this October 29 meeting if Respondent would send him the new employee information whenever new employees were hired so the Union could contact the new employee(s) and update their records.⁸ (Tr. 21–22, 63, 83, 101, 139–140.) In response, the management group told Meisinger that they would look into this, check the CBA, and get back to Meisinger with Employer's response. (Tr. 21, 52, 56, 63, 93, 97–99, 101.)

Also, Wadsworth denied Meisinger's request to go out to a crew in the field as a union representative to talk with the crew while they are working (a crew visit) which would be another alternative means of getting to know both member and non-Union member unit employees. (Tr. 22, 141.) Finally, Meisinger admits that at this meeting, what he really wanted was a list of new hires that included their addresses and telephone numbers but that through November 2015, Respondent only provided him different versions of the Seniority Lists referenced in the CBA at article 8. (Tr. 57.) Also, Meisinger did not specifically refer to the McCarville/Johnson correspondence from March/April 2015 referenced above at any time to the management group on October 29. (Tr. 98, 100.)

Later that same day, Respondent HR Director Witherell sends an October 29 email to Meisinger in response to his oral request at the earlier meeting and says in regard to "New Employee Notification" and the Union's request that Respondent provide the Union with notification of new hires, "we have reviewed the CBA and there is not language present requiring us to do so. As such, we will continue with our current process of advising new employees to contact the Union directly if they have an interest in doing so." Respondent made no offer of accommodation to the Union. (Tr. 23, 98–99; GC Exh. 3.)

Witherell also points out that the Union can get the names of newly hired employees, their position, and their start date from union stewards at Respondent and Respondent supplies this information to all of its employees. (Tr. 131.) Larry Binder (Binder), a former union steward at Respondent prior to July 2014, testified that as a steward, he would meet with newly hired employees and explain the benefits of a union and let them make a decision whether or not they want to pay dues. (Tr. 175.)

⁷ I note that as of March 2015, CEO Wadsworth's only objection on privacy grounds relates to the March 31 request that Respondent provide the last 4 social security digits of each bargaining unit employee as the additional information requested on March 31 is limited to each unit employee's name, classification, and date of hire—the same non-private information that Respondent freely provides each January as part of the CBA Section 8 Seniority List referenced above.

⁸ Meisinger later discovered that he is entitled to the requested information under the Act even though it is not provided for in the seniority list of the CBA. Tr. 36–37, 109; GC Exh. 11.

On November 2, Meisinger responds regarding “New Employee Notification” and in an email to Witherell his information request evolves to become a request for a complete employee list of *all* Respondent employees covered by the CBA. “The information is to include the employee’s name, classification, date of hire, *current address, phone number*, and last four digits of their social security number.” (Emphasis added). The reasons given for this request are that it is in an effort to update the Union’s records and maintain accurate information. The Union concludes that the requested information is essential for IBEW Local 111 “so we can properly represent our members” and a December 1 deadline is given to Respondent. (Tr. 24, 99–100; GC Exh. 4.)

Meisinger also sends an 11/2/15 letter request for information to CEO Wadsworth regarding “Employee List as of January 31, 2015.” The letter request for information is the same evolved request as the 11/2 email except as to the subject matter and the letter contains the same December 1 deadline as the email *but only requests the employee’s name, classification, date of hire and current address*. A request for telephone numbers and the request for last four digits of employee’s social security numbers are omitted from the November 2 letter.⁹ (Tr. 24–25, 62; GC Exh. 5; GC Exh. 11(b).)

On November 3, Witherell responds to Meisinger’s November 2 email with an email to Meisinger regarding “New Employee Notification.” (Tr. 101; GC Exh. 6.) The November 3 email says essentially the same things as Witherell’s October 29 email referenced above, GC Exh. 3, that the CBA does not require that Respondent send the Union the requested information. Respondent made no offer of accommodation to the Union. Attached to the November 3 email is also a copy of Respondent’s March 31 letter from McCarville to Wadsworth referenced above as GC Exh. 6(c) as well as a copy of Respondent’s April 2 response from Johnson and a copy of the March 31 Seniority List also provided with Respondent’s April 2 response to McCarville. (Tr. 26–28, 102–103; GC Exh. 6(d) and (e).)

Meisinger was aware of the Respondent’s position that the Union was not entitled to the Seniority List¹⁰ that McCarville

requested in March 2015 under the terms of the CBA. (Tr. 52–55.) Meisinger never used the Seniority List interchangeably with the new Employee List he sought and he also acknowledges that McCarville was not entitled to receive the last four digits of bargaining unit employees’ social security numbers. (Tr. 55.) Meisinger believed that he was entitled to receive the requested information, possibly under the CBA, if not somewhere else. (Tr. 21–22, 139.)

On November 6, Meisinger sends Witherell an email regarding “PVREA’s [sic. Union’s] request for Employee Information” that contains a copy of his November 2 letter and once again clarifies the total information requested by deleting the Union’s request for each employee’s last 4 digits of their social security number. (Tr. 30; GC Exh. 7.) Thus, Meisinger told Witherell that he was no longer seeking the bargaining unit employees’ social security numbers not because they were private information but because Meisinger had been told by McCarville that the Union no longer needed this information. (Tr. 67.) Meisinger’s information request was now limited to the bargaining unit employees’ names, classifications, addresses, and telephone numbers. (Tr. 32–33.)

On November 9, via email from Witherell to Meisinger regarding “PVREA’s [sic. Union’s] request for Employee Information,” Witherell repeats her earlier position that Article 8 of the CBA calls for posting of the seniority list within a discreet period early in the year and also defines what info is to be included on the list (name, classification, date of hire). Witherell further writes that as a courtesy in response to the Union’s November 2 letter request for information, Respondent will provide the Union with a Seniority List as of November 1. The email concludes by saying that Respondent “will not share private employee information such as current addresses” and that Respondent has not shared this information previously. Respondent made no offer of accommodation to the Union. (Tr. 31–33, 102–104; GC Exh. 8.)

On November 16, Meisinger sends Wadsworth a letter regarding “Employee List.” The letter begins saying: “In furtherance of the Union’s obligation as collective-bargaining representative and in order to properly represent the bargaining unit, the Union is requesting the following information:

Please send a list of all bargaining employees that are currently identified in the [CBA] by classification between [Respondent and the Union.] Please include the employees[’][sic] name, address, and phone number.”

“This is my third request for this information and under the National Labor Relations Act[,] [sic] I am entitled to this information. Any attempt to not comply with this request is a violation of the Act.” (Tr. 34–35, 80, 105; GC Exh. 9.)

On December 3, Respondent, by Witherell, once again repeats its November 9 email, GC Exh. 8 above, and mentions that Respondent’s obligation to provide the Seniority List in the CBA in January has been satisfied and that Respondent has also

⁹ Meisinger’s business manager at the Union informed Meisinger *after* the Nov. 2 email had been sent to Witherell but *before* the Nov. 2 letter to Wadsworth that the Union did not need the last four digits of employees’ social security numbers. Tr. 25.

¹⁰ Witherell testified that she and Meisinger used the Seniority List and the New Employee Notification and Employee List interchangeably at this time. Tr. 90, 100–103, 121, 128; R.Br. at 18, 22, 26. I reject this testimony and argument as only Respondent used the seniority list interchangeably with the employee list and Witherell’s testimony is inconsistent with Meisinger’s understanding of these labels as evidenced by his testimony and in his correspondence that Meisinger knew the difference between an employee list he sought in November/December 2015 and a seniority list which is covered by the CBA. (Tr. 61–62.) Specifically, the Seniority List was tied to the CBA and only available to the Union at the beginning of each calendar year under the clear and unambiguous terms of article 8 of the CBA and that Meisinger, instead, sought the names addresses and telephone numbers of all bargaining unit employees as a statutory right under the Act particularly so he could learn the identity, address, and telephone numbers of new hires and non-member unit employees at Respondent as of

November 2, 2015, so he could contact them about union membership and update his records as soon as possible. Tr. 21, 57, 61–63, 83, 101, 139–140.

provided the Union this Seniority List at more frequent intervals than required under the CBA (March 31, 2015). Respondent made no offer of accommodation to the Union. (Tr. 35–36, 107–108, 119–120; GC Exh. 10.) Witherell admits that she did not consider the Act in her responses to the Union’s information requests. (Tr. 121.)

On December 18, Meisinger sends an email to Witherell which reads: “In regards to our November 2nd information request for employee information (attached), the Local is not requesting this information under a provision of the CBA – it is doing so in furtherance of its representation duties, and in order to police the CBA, IBEW Local 111 is legally entitled to this information under the NLRA. Please be advised that if we do not get this information from you by January 2nd, 2016, we will be filing an unfair labor practice charge against PVREA for its repeated failure to disgorge this information.” The Union also attached a copy of the November 2 letter to Wadsworth, GC Exh. 5. The email also copies outside legal counsel for the Respondent and the Union and McCarville. (Tr. 36–37, 109; GC Exh. 11.)

Meisinger admits that at the time of his December 18 letter, GC Exh. 11, the Union was not preparing for or having ongoing collective-bargaining negotiations with Respondent, there were no ongoing grievances pending or to be filed involving any wages, hours, or working conditions, and there was no notice to commence bargaining at this time. (Tr. 85, 110, 152–153.) The CBA, however, was slated to expire in September 2016. (GC Exh. 2.) The CBA was expiring as of September 2016. (GC Exh. 2.)

On December 19, Respondent’s outside legal counsel sends an email to Meisinger and the Union’s outside legal counsel with a copy to his client, Witherell, responding to Meisinger’s December 18 email, GC Exh. 11, and basically says to the Union that they can contact the bargaining unit employees directly to get the same information and if the Union has legal authority in support of the Union’s position that this private information must be turned over to the Union, please send it to Respondent’s lawyer and keep all future correspondence in this matter between the outside counsel from here on out. (Tr. 37–38; GC Exh. 12.)¹¹ Witherell, however, did not offer any accommodation from Respondent to the Union for the Union to obtain the same names, addresses, and telephone numbers sought by its November 6 information request. (Tr. 110.)

Meisinger admits that as assistant business agent for the Union, he attended monthly meetings with unit employees but they were sparsely attended as only 6–10 dues-paying members

would attend these meetings on average of the 42 unit employees at Respondent. (Tr. 65, 77–78.) Wadsworth and Witherell admit that there have been no recent strikes at Respondent where any striker replacement workers could have been hired. (Tr. 127, 162.) As stated above, the CBA specifically provides that neither the Union nor its members can ever go on strike. (GC Exh. 2 at 2.) Witherell also admits that the Union could not use the Respondent’s email system to notify an employee if the Union did not already know the name of an employee. (Tr. 128.)

On December 21, the Union’s counsel emailed Respondent’s counsel with copies to Meisinger and McCarville and informed Respondent’s counsel that bargaining unit employee’s addresses and telephone numbers had not been provided to the Unit by Respondent in response to the Union’s earlier information requests. (Tr. 39–40, 43–44; GC Exh. 13.)

On December 22, Respondent’s counsel emails a letter to the Union’s counsel. (Tr. 40; GC Exh. 14.) Among other things, the December 22 letter from Respondent’s counsel provides:

The Union has acknowledged in the past and the instant case these qualifications to production obligations when they involve confidential information. You should be aware of meetings previously held between the union leadership and PVREA management during Mike Byrd’s administration [in or before 2013] in which the union sought access to confidential information about members’ dues delinquencies and demands for payments. In those instances, the employees complained to PVREA management about the harassing techniques used by the local to collect these monies. Management met with the Union representatives to discuss alternative means to allow the Union to pursue these delinquencies without intruding on the privacy or confidentiality issues of the bargaining unit employees.¹² We offer now those similar accommodations¹³ – post a letter to your unit and solicit their addresses from them; access the premises to hold a meeting to gain signed authorizations to have the employer release their addresses; hold a Union meeting offsite to gain the employees’ approval to release this private confidential information; use an independent third-party mailer; or, as the Union has

¹¹ At hearing, Respondent’s counsel similarly argued that at all relevant times, the Union had the ability to obtain the same requested information at issue here, the bargaining unit employees’ addresses and telephone numbers, through open use of a bulletin board message system at Respondent, its monthly meetings with bargaining unit employees on Respondent’s premises, and through employee email addresses available to all employees at Respondent. Tr. 14, 61. Respondent counsel also argued at hearing that the Union’s information request is improperly trying to modify the CBA through the request for information process. Tr. 60. The General Counsel argued that there is nothing improper with the Union using information requests here to update its records regarding unit employees. Tr. 60.

¹² While Meisinger worked under McCarville for the Union and Meisinger knew that Mike Byrd preceded McCarville as the union business manager at Respondent, Meisinger had no knowledge of any prior history at Respondent of employees purportedly being disrupted by the Union’s use of private information to collect delinquent dues payments. Tr. 67. Wadsworth recalled that a prior issue in 2013 regarding employee privacy came to light at Respondent involving accusations that the Union was trying to use alleged private information to collect delinquent dues payments. Tr. 145–146. Witherell opines that the Respondent and Union have had a positive working relationship since at least October 2014. Tr. 130. More importantly, the Union here seeks presumptively relevant bargaining unit employees’ 2015 names, addresses, and telephone numbers and *not* information from, in, or before 2013 about members’ dues delinquencies.

¹³ While Respondent’s counsel makes disingenuous reference to “accommodation” throughout his December 22, 2015 letter, what he is really doing is pointing out to the Union various alternatives which as referenced herein have proven ineffective for various reasons. Respondent made no offer of accommodation to the Union.

done before, bring such a proposal to modify the current CBA to the bargaining table. These accommodations are appropriate under the circumstances. Feel free to propose alternative accommodations for PVREA's consideration.

(Tr. 111–112, 156–159; GC Exh. 14(b).) Respondent made no offer of accommodation to the Union. Witherell opines that the Respondent and Union have had a positive working relationship since at least October 2014. (Tr. 130.)

The Union filed its charge on January 5, 2016 which states that “[s]ince on or about November 3, 2015, the employer has refused to provide a current employee list of all employees covered under the CBA between IBEW Local 111 and the employer.” (Tr. 58–59; GC Exh. 1(a).) The charge was amended by the Union on March 31, 2016 and again on April 5, 2016, as the basis of the amended charge became that “[s]ince on or about November 3, 2015, the employer has refused to provide a current employee list of all employees, including their name, classification, date of hire, telephone number, and current address, who are covered under the CBA between IBEW Local 111 and the employer” and the employer was clarified as incorporated Respondent. (GC Exh. 1(d); 1(g).)

In addition to the need expressed in its information requests for the unit employees’ names, addresses, and telephone numbers (i.e., its statutory duty to properly represent all bargaining unit members whether or not they were members of the Union, to update union records, and in order to police the CBA), the Union also cited at the hearing more specific concerns, mainly relating to the Union’s need to directly contact bargaining unit employees because Respondent did not immediately communicate when a new hire arrived at Respondent and, therefore, Meisinger relied hit and miss either on other information or word of mouth from union stewards at Respondent to find out about newly hired employees so Meisinger could give a new employee hire a union packet. (Tr. 21, 51, 63, 81–84.) Finally, in this time of computerized data maintenance, I further find that the requested bargaining unit employee names, addresses, and telephone numbers for approximately under 50 employees would place no material burden on Respondent to produce.

Analysis

A. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd.* 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Daikichi Sushi*, 335 NLRB at 622. My credibility findings are generally incorporated into the findings of fact set forth above.

B. Summary

The CBA in effect at the time of hearing was scheduled to

expire in September 2016. The CBA is silent on the subject of furnishing unit employees’ addresses and telephone numbers to the Union. From June to October, Meisinger was not receiving information on newly hired employees at Respondent that he expected and normally received from other employers so he asked for bargaining unit employees’ names, addresses, and telephone numbers. The information requests on October 29 and November 2 started out more broadly than Meisinger actually needed and was later refined to what was most needed – bargaining unit employees’ names, addresses and telephone numbers. The requested names, addresses, and telephone number of unit employees are not private confidential information. Instead, it is presumptively relevant and necessary information as Meisinger, the assistant union business manager, was not receiving this information from Respondent, his union stewards, crew visits, or from the union bulletin boards at Respondent’s premises, or from monthly union meetings sparsely attended by a few dues-paying members. This information was necessary for collective bargaining and for the Union’s representational role as the CBA was expiring in September 2016.

Here, unlike situations where: (1) non-bargaining unit information is being sought; (2) employer’s trade secrets are involved; or (3) medical test results of employees are the subject of an information request, Meisinger seeks only the bargaining unit employees’ names, addresses, and telephone numbers. More importantly, any alleged hint of harassment by the Union against the Respondent occurred almost 3 year before the current information request, it involved a tense relationship between the Respondent and the Union which there was no evidence of being present here, such that any alleged harassment here is too tenuous and irrelevant to the current information request. The Respondent offered no accommodation on its own such as limiting the use of the information by time or who from the Union could view the information, or making it subject to a protective order or confidentiality agreement. The only offered alternatives from the Respondent had to do with actions suggested be taken by the Union to obtain the same information which had proven ineffective as discussed more fully below.

1. This information request case should not be deferred to arbitration

I am mindful that “the Board is not required by the [Act] or by ‘national labor policy’ to defer information request cases to arbitration.” *DaimlerChrysler Corp. v. NLRB*, 288 F.3d 434, 444 (D.C. Cir. 2002). Also, the “Board has long adhered to a policy of refusing to defer disputes concerning information requests” to arbitration. *Id.*; *Postal Service*, 302 NLRB 918, 918. Any exceptions to this policy must be made by the Board in the first instance. *Cf. SBC California*, 344 NLRB 243, 243 fn. 3 (2005) (judge correctly applied the Board’s policy of non-deferral in information cases, where a three-member Board majority has not overruled existing Board precedent). As such, because the Board has not made such an exception to its longstanding policy for the type of situation set forth herein, deferral of this matter is inappropriate.

2. The Union's January 5, 2016 ULP charge is not barred by the section 10(b) 6-month limitations rule

The Respondent throws out its argument that the Union waited too long to file its charge in this matter. Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge." Here, Respondent contends that Section 10(b) bars the complaint because a March 31, 2015 request for information from the Charging Party Union denied by Respondent on April 2 is virtually identical to an October/November 2015 request for information from the Union's new business agent. As a result, Respondent argues that the April 2, 2015 denial date is controlling to start the statute of limitations.

The General Counsel argues any earlier union requests for similar information [the March 31, 2015 request] would have had its own separate Section 10(b) timely filing dates, but that earlier request is not at issue in this proceeding. The March 31, 2015 request's 10(b) timely filing date, therefore, is irrelevant. As the Complaint makes clear, the only alleged Act violations in this matter relate to the Respondent's violations 'since about October 29, 2015' relating to the Union's evolving October 29/November 6 information requests since that date for bargaining unit employees' contact information. The Union timely filed charges over the only alleged violations in this case.

I find that there is no merit to the claim that the charge is barred by the Section 10(b) 6-month limitations rule. The Union's initial information request containing the request for bargaining unit employees' names, addresses, and telephone numbers, began verbally on October 29, 2015 and evolved on November 6 to become the information request at issue here. Respondent's initial refusal to provide the requested information began on October 29, and evolved to November 2, 9, and December 3, followed by the Union's filing of a charge on January 5, 2016, less than 6 months from Respondent's initial refusal.

In their brief, the Respondent cites to *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411 (1960), in its argument that the November 6 information request is barred by the statute of limitations because of the March 31 information request. However, the General Counsel is not relying on the facts relating to the March 31 information request. It was not proven that McCarville's March 31, 2015 information request was identical to Meisinger's November 6 information request for all bargaining unit employees' names, classifications, dates of hire, addresses, and telephone numbers as of November 6. Therefore, the statute of limitations did not begin until October 29 at the earliest.

Moreover, I further find that the March 31 information request and the November 6 information request are different. The March 31 information request dealt with names, classifications, dates of hire, and last 4 of the employee's social security number digits, while the November 6 information request evolved to request the same names, classifications, and dates of hire information and added these employees' current addresses and phone numbers. Moreover, failure to provide information in the past does not constitute a continuing waiver. *Owens-Corning Fiberglass*, 282 NLRB 609 (1987).

Assuming both acts by the Respondent in refusing to give the information to the Union constitute an unfair labor practice

under Section 7 of the Act, each act is a separate incident from the other. The Union did not mention the March 31 request but instead made an independent information request beginning on October 29 to later become the November 6 information request at issue here. Since both are independent acts with different facts, Section 10(b) does not bar the January 5, 2016 charge which is based on the November 6 information request for bargaining unit employee names, addresses, and telephone numbers.

3. The requested information-bargaining unit employee names, addresses, and telephone numbers-are relevant and nonconfidential

a. Presumptive Relevance of Bargaining Unit Employees' Names, Addresses, and Telephone Numbers

Under Section 8(a)(5) of the Act, an employer must, upon request, provide a union with information, which is necessary and relevant to collective bargaining and its representational role. See e.g., *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967), citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). See also *Daimler Chrysler Corp.*, 288 F.3d 434, 439 (D.C. Cir. 2002) ("[I]nformation is essential to the union if it is to function effectively as the bargaining agent for unit employees"). Relevance is defined by a broad discovery standard, and it is only necessary to show that requested information has potential utility. *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011). Under that standard, even potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *United States Testing*, supra, at 859; *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). An employer must, for example, provide information connected to collective bargaining or contract administration. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956); *Southern California Gas Co.*, 344 NLRB 231, 235 (2005).

The failure to provide requested relevant information is a violation of Section 8(a)(5) of the Act.¹⁴ Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

Information related to bargaining unit members is presumptively relevant, including, names, addresses, and phone numbers, and the result here is controlled by the Board's decisions in *Childrens Center for Behavioral Development*, 347 NLRB 35, 49 (2006) (All bargaining unit employees' home addresses and telephone numbers are presumptively relevant and not confidential); *River Oak Center for Children*, 345 NLRB 1335 (2005) (same); and *Helca Mining Co.*, 248 NLRB 1341, 1341, 1343 (1980) (unit employees' names and addresses must be forthwith provided to the union as relevant & not private re-

¹⁴ In addition, an employer's violation of Sec. 8(a)(5) of the Act is a derivative violation of Sec. 8(a)(1) of the Act. *Tennessee Coach Co.*, 115 NLRB 677, 679, enfd. 237 F.2d 907 (6th Cir. 1956). See *ABF Freight System*, 325 NLRB 546, 546 fn. 3 (1998).

quested information), and cases cited respectively therein. As a result, no particularized showing of need is necessary given the Union's role as bargaining agent here. See *Georgetown Holiday Inn*, 235 NLRB 485, 486 (1978), and cases cited.

In addition, a union can obtain supplemental updates about unit employees' addresses and telephone numbers from the employer even when this same information has previously been provided pursuant to a provision in the collective-bargaining agreement. See *River Oak Center for Children*, 345 NLRB at 1335; *Watkins Contracting, Inc.*, 335 NLRB 222 fn. 1, 224–225 (2001). The Board's reason for this is that "[i]t is reasonable to assume that there was employee turnover, changes in address, phone numbers, and job classifications." *Watkins Contracting, Inc.*, 335 NLRB at 225 (citing *Long Island Day Care Services*, 303 NLRB 112, 130 (1991)).

b. The Requested Information Is Not Confidential

Respondent asserts a confidentiality interest in protecting from disclosure the bargaining unit employees' names, addresses, and telephone numbers. Respondent, however, cannot find refuge in a claim of privilege. As found above, the requested information here is presumptively relevant and is not confidential or private as referenced above and for the additional reasons that follow.

I find that Meisinger convincingly opined that the requested information is necessary because there is an unusual difficulty for the Union effectively to communicate with all of the unit employees, members and nonunion members, whom Meisinger is duty bound by statute to represent, including because of the relative ineffectiveness of the steward system, the fact that regular union meetings are sparsely attended, Respondent's denial of crew visits, and that unlike other employers he has experienced, Meisinger was not being informed by Respondent immediately whenever a new employee was hired into the bargaining unit (collectively known as the ineffective alternatives). Also I find that the requested information is necessary for collective bargaining and for the Union's representational role as the CBA was expiring in September 2016.¹⁵ I further find that when weighing the Union's inability to successfully obtain the same requested information here through the use of the ineffective alternates referenced above versus the potential burden to the Respondent of compiling and furnishing such information for only 42 bargaining unit employees, I find that Respondent can furnish the bargaining unit employees' names, addresses, and telephone numbers with ease and efficiency and that this factor renders the availability of such ineffective alternative channels relatively insignificant to the statutory merits of the Union information request.

Alternatively, even if the requested information may be confidential, in *Postal Service*, 356 NLRB 483, 486 (2011), the

Board explained:

A party asserting a confidentiality defense must prove a legitimate and substantial confidentiality interest in the information withheld. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). Confidential information is limited to a few general categories that would reveal, contrary to promises or reasonable expectations, highly personal information. *Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995). Such confidential information may include "individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits."

Id.

In *A–1 Door & Building Solutions*, 356 NLRB at 500–501, the Board stated:

In considering union requests for relevant but assertedly confidential information, the Board balances the union's need for the information against any "legitimate and substantial" confidentiality interests established by the employer. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979) [parallel citations omitted]. The party asserting confidentiality has the burden of proving that such interests exist and that they outweigh its bargaining partner's need for the information. See *Jacksonville Area Assn. for Retarded Citizens*, 316 NLRB 338, 340 (1995).

More to the instant case, the Board also held in *Transport of New Jersey*, 233 NLRB 694 (1977), that an employer's refusal to comply with a union's request for the names and addresses of passenger-witnesses to a bus accident, in the context of the employer's determination that the driver was at fault, violated Section 8(a)(5) and (1).

In this case, the information sought to be protected is not highly personal, proprietary, or traditionally privileged.

In addition, there is no credible record evidence of fear by bargaining unit employees of harassment or violence from the Union if their addresses and telephone numbers are provided. See *Metropolitan Edison*, 330 NLRB at 108 (While it "would be naïve to deny any latent possibility of retaliation against informants whose information leads to an investigation and discharge of an employee, . . . this case presents no more than just that—a possibility. There is nothing in this record to indicate a likelihood or real risk of retaliation or violence."). Moreover, Witherall made clear that the Respondent and the Union have had a positive working relationship since on or before October 2014 and made no reference in her emails to Meisinger that anyone at Respondent harbored a clear and present fear of harassment from the Union's information request.¹⁶

¹⁵ See, i.e., *NLRB v. CJC Holdings, Inc.*, 97 F.3d 114, 117 (5th Cir. 1996), where the Circuit Court rejected the employer's argument that it did not have to disclose employee's addresses as requested by the union to allow it to update its records because the union had various alternative means of communication with the employees because the 5th Circuit found that the requested addresses were so fundamental to the union's capacity to communicate with the employees it represented that the union did not have to make a special showing of specific relevance.

¹⁶ Any alleged past Union harassment for members' delinquent dues payments in or before early 2013 is unrelated and irrelevant to the November 2015 information sought here and is too tenuous for any reasonable fear of harassment to convert the non-confidential requested information to privileged information. See *Page Litho, Inc.*, 311 NLRB 881, 883 (1993) (Strike ending January 19, 1990, with no incidents of

This is *not* a case where strike replacement workers fear for their safety as in the cases cited by Respondent in support of limiting access of the Union to bargaining unit employees' names, addresses, and telephone numbers. In addition, the CBA here specifically prohibits bargaining unit employees and the Union from striking at this public utility and electric cooperative Employer.

Assuming arguendo that the Respondent is not estopped from asserting the confidentiality claim, the Respondent's claim must still fail. A party claiming confidentiality must tell the union of its claim and bargain to seek accommodation of its interests. See *Minnesota Mining & Mfg. Co.*, 261 NLRB 27 (1982). In that event, however, the employer must offer and bargain in good faith over a reasonable accommodation, such as redacting the information and/or restricting its use. The burden is on the employer not the union to propose a precise option to providing the information unedited. See *A-1 Door & Building Solutions*, 356 NLRB 499, 500–501 (2011); and *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). See also *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20–21 (D.C. Cir. 1998), and cases cited there.

The fact that the union may be able to obtain the requested information from a source other than the employer or by means other than requesting it from the employer “does not alter or diminish the obligation of the [e]mployer to furnish relevant information [citations omitted].” *Watkins Contracting, Inc.*, 335 NLRB at 225.

Here, the Respondent failed to offer a reasonable accommodation to the Union. The Respondent did not make any effort to seek accommodation or approach the Union to bargain about limiting the information provided in order to protect the alleged confidentiality. Respondent never offered to provide the requested information to the Union subject to a protective agreement for limited access or viewing or any other manner that

misconduct thereafter did not justify a refusal to supply the names of bargaining unit employees nearly 4 months later). Here, Respondent's throw-in argument in its December 22, 2015 letter to the Union, its sixth expanded refusal to provide the requested information for the first time raises the Union's alleged past harassment techniques to collect dues delinquencies in or before January 2013 - almost 3 years from the instant information request. I find that to hold in these circumstances that the Respondent need not provide the requested information would establish an unreasonable precedent, i.e., that on the basis of alleged past unrelated union misconduct almost 3 years prior, an employer could foreclose for an indefinite length of time the opportunity for the bargaining representative to obtain the names, addresses, and telephone numbers of all bargaining unit employees. I conclude that Respondent's purported fear of harassment was no longer reasonable in November 2015 and that the Union is entitled to the information requested. As stated above, Witherall made clear that the Respondent and the Union have had a positive working relationship since on or before October 2014 and made no reference in her emails to Meisinger that anyone at Respondent harbored a clear and present fear of harassment from the Union's information request. “It is well established that there must be more than a speculative concern on the part of the employer . . . there must be a clear and present danger of harassment and violence . . . to justify a refusal to furnish a union with relevant information . . . [citations omitted].” *Safelite Glass*, 283 NLRB 929, 948 fn. 26 (1987).

would accommodate its concerns as required under the NLRA. Rather, without providing any assistance, Respondent merely asked the Union to take its own steps to try and obtain the same information through the Union's use of its own ineffective alternatives referenced above including the poor steward system and sparsely attended Union meetings. As indicated above, this was insufficient. Moreover, no evidence was presented showing that the Union is unreliable concerning confidentiality agreements. See *Reiss Viking*, 312 NLRB 622, 622 fn. 1 (1993) (employer's failure to show that the union is unreliable re: confidentiality agreements is an important factor in assessing the employer's confidentiality defense).

In sum, the specific facts and circumstances here are distinguishable from the facts in the cases cited by Respondent against producing the requested information such as the *Chicago Tribune Co. v. NLRB*, 79 F.3d 604 (7th Cir. 1996), and *Grinnell Fire Protection Systems Co. v. NLRB*, 272 F.3d 1028 (8th Cir. 2001), cases with facts involving ongoing strikes and labor unrest with threats of violent conduct against striker permanent replacement workers and the potential for misuse of the information not present in this case where the Union's new assistant business manager simply wanted to update the Union's records in response to ineffective alternatives with Respondent and member and non-Union member bargaining unit employees. “Moreover, controlling Board precedent is to the contrary.” *River Oak Center for Children, Inc.*, 345 NLRB at 1335–1336 fn. 6.

Once again, this case does not present credible evidence of any relevant fear of safety or concern of retribution. Respondent has not proven any relevant reasonable “clear and present danger” of harassment. See *Diamond Walnut Growers*, 312 NLRB 61 (1993), *enfd.*, 53 F.3d 1085 (9th Cir. 1995). See also *Page Litho, Inc.*, 311 NLRB 881 (1993) (Ordering disclosure of striker replacement information reaffirming “clear and present danger” test, and finding that employer's alleged fear of harassment was no longer reasonable nearly 4 months after strike ended and last reported incidents of harassment had occurred). Finally, there is no credible evidence here that the bargaining unit employees requested anonymity or that Respondent ever promised confidentiality as to the *identities, addresses, and telephone numbers* of the bargaining unit employees.

Given the specific facts in this case, and the Board precedent, I find that the Respondent has not proven a legitimate and substantial interest in preserving the confidentiality of the names, addresses, and telephone numbers of the bargaining unit employees. Because I find there is no legitimacy of the Respondent's claimed confidentiality interest in the bargaining unit employees' names, addresses, and telephone numbers, I further find that the requested names, addresses, and telephone numbers must be produced and that no accommodation in its place is necessary. I therefore conclude that the Respondent violated Section 8(a)(5) and (1) by refusing to provide to the Union the names, addresses, and telephone numbers of the bargaining unit employees.

4. The CBA does not mention or bar the Union's information access to bargaining unit employees' names, home addresses, and telephone numbers

Another affirmative defense thrown in by Respondent is that the CBA does not require them to provide bargaining unit employees' names, addresses and phone numbers under Section 8. Also, the Respondent argues that the Union is trying to unilaterally modify the contract by adding that the request must include addresses and phone numbers to the Seniority List provided once per year in January. Respondent further argues that the Union, through this article 8 language, gave up or waived its right under the Act to obtain unit employees' home addresses and telephone numbers.

The relevant part of the CBA involving the unrelated Seniority List is Section 8 which states:

Within thirty (30) days after the beginning of each calendar year, the Association will post a seniority list for the Association including all employees in the bargaining unit, their classifications and their date of hiring. Any dispute regarding the seniority posting shall be taken up by the bargaining committee and representatives of the Association within thirty (30) days after this posting.

(GC Exh. 2 at 3.)

This is not a dispute regarding the Seniority List posting. I find that it is a separate dispute concerning Respondent's failure to produce the bargaining unit employees' addresses and telephone numbers which are not mentioned in the CBA and has nothing to do with employee seniority and is more a function of the Union's ineffective alternatives. Thus, the CBA is silent on the subject of furnishing unit employees' addresses and telephone numbers to the Union. (GC Exh. 2.)

It is the obligation of both parties to bargain in good faith and to not unilaterally modify or terminate a collective-bargaining agreement. 29 U.S.C. § 158(d) (2016). "In accordance with that policy, the Board has recognized that a union's right to information is a statutory right that is independent of rights accorded under a collective-bargaining agreement. See *Chapin Hill at Red Bank*, 360 NLRB 116, 122-123; *Lithographers Local One-L (Metropolitan Lithographers Assn.)*, 352 NLRB 906, 915 (2008) (rejecting respondent's contention that 'the Agreement defines and limits the scope of its obligation to provide information under the Act'); *Helca Mining Co.*, 248 NLRB supra at 1344 ('the right to such information [a list of names and addresses of bargaining unit employees] being a matter of statutory entitlement there is ordinarily no need to obtain an employer's agreement to do that which he is already compelled by statute to do'); *American Standard*, 203 NLRB 1132, 1132 (1973) ('[i]t is now well settled that a collective-bargaining representative is entitled to information which may be relevant to its task as bargaining agent, and this is not a matter for deferral to arbitration where, as here, the material is sought as a statutory, rather than a contract right'). (GC Br. at 21).

In agreement with General Counsel's contention, I further find that here the Union is entitled to the requested names, addresses, and telephone numbers information to keep their records current about membership as a separate statutory right

distinguishable from its rights under the CBA which makes no reference to providing the Union with bargaining unit employees' addresses and telephone numbers.

In addition to names, addresses, and telephone numbers, the Union also sought bargaining unit employees' classifications and dates of hire, items included as part of the Seniority List provided in January each year. (GC Exhs. 1 and 2.) Respondent also contends that by agreeing to what essentially amounts to a Seniority List, the contract [CBA] covers the Union's request for employee addresses and phone numbers. I further find that while Article 8 of the parties' collective-bargaining agreement provides that Respondent shall annually post a list of employee names, classifications and hire dates, article 8 is completely silent with respect to the home addresses and telephone numbers of unit employees. Thus, there is no basis to claim that the providing of unit employees' phone numbers and home addresses is covered by article 8 of the contract.

The Respondent's final argument is that the Union, through this article 8 language, gave up or waived its right under the Act to obtain unit employees' home addresses and telephone numbers. The General Counsel counters arguing "... there is no clear waiver in the parties' collective-bargaining agreement of the Union's right to unit employees' home addresses and phone numbers. (GC Br. at 22.)

The waiver of the right to information relevant to the fulfillment of a union's statutory duty of representation of unit employees by a collective-bargaining agreement is not lightly inferred and must be "clear and unmistakable" in express terms and not by implication and not merely by omission from the contract. See *Metropolitan Edison v. NLRB*, 460 U.S. 693, 708 (1983); *Skyway Luggage Co.*, 117 NLRB 681 (1957); *California Portland Cement Co.*, 103 NLRB 1375 (1953). The party asserting waiver must establish that the parties "unequivocally and specifically express[ed] their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply." *Provena St. Joseph Medical Center*, 350 NLRB 808, 811 (2007); see also *Lithographers Local One-L (Metropolitan Lithographers Assn.)*, 352 NLRB 906, 915 (2008) (the Board has held that a contract provision entitling a party to certain specific information will not be found to constitute a waiver of that party's right to receive other relevant information, unless such a waiver is expressly stated in the agreement). "Failure to provide information in the past does not constitute a continuing waiver." *Owens-Corning Fiberglass*, 282 NLRB 609 (1987).

I further find that the Respondent has not established that the Union has waived its right under the Act to obtain the requested information of bargaining unit employee names, addresses, and telephone numbers. In addition, there is no language in the CBA expressly and unmistakably mentioning or specifically waiving, the Union's right to unit employees' names, addresses, and telephone numbers. (See GC Exh. 2.)

Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing, on and after November 6, 2015, to furnish the Union with the current names, home addresses, and home telephone numbers of bargaining unit employees and I shall recommend that Respondent be ordered

to cease and desist therefrom and to remedy that violation by forthwith furnishing such current information to the Union and by posting an appropriate notice.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act, and is, and has been at all times material herein, the exclusive collective-bargaining representative in the appropriate unit set forth below:

All regular full-time employees of the Association included within the following classifications: working foreman, lead lineman, lineman, tree trimmer foreman, lead tree trimmer, tree trimmer, vehicle maintenance technician, ground man, apprentice lineman, apprentice tree trimmer, fleet mechanic, equipment operator, warehouse and plant maintenance foreman, fleet mechanic foreman, lead mechanic, warehouse and vehicle helper, plant and maintenance helper, operations/dispatch clerk, operations administrative assistant, cable locator, customer service representative, and customer service representative lead; excluding all other employees and supervisors as defined in the National Labor Relations Act.

3. By failing and refusing on and after November 6, 2015, to furnish the Union with the current bargaining unit employees' names, home addresses, and home telephone numbers, Respondent engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

4. Respondent's above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Unless specifically found above, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that the Respondent Poudre Valley Rural Electric Association, Inc. has engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER¹⁷

The Respondent Poudre Valley Rural Electric Association, Inc., Fort Collins, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union, the International Brotherhood of Electrical Workers, Local 111, AFL-CIO with requested information that is relevant and necessary to the Union's performance of its duties as collective-bargaining representative of the Respondent Poudre Valley Rural Electric Association, Inc.'s bargaining unit employees.

¹⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Promptly provide the Union with the names, home addresses, and home telephone numbers of all bargaining unit employees as of November 6, 2015, requested by the Union.

(b) Within 14 days after service by the Region, post at its Fort Collins, Colorado facility copies of the attached notice marked "Appendix."¹⁸ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 27, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington D.C. February 27, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

¹⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to provide International Brotherhood of Electrical Workers, Local 111 (Union) with information that is relevant and necessary to its role as your bargaining representative in the appropriate unit set forth below:

All regular full-time employees of the Association included within the following classifications: working foreman, lead lineman, lineman, tree trimmer foreman, lead tree trimmer, tree trimmer, vehicle maintenance technician, ground man, apprentice lineman, apprentice tree trimmer, fleet mechanic, equipment operator, warehouse and plant maintenance foreman, fleet mechanic foreman, lead mechanic, warehouse and vehicle helper, plant and maintenance helper, operations/dispatch clerk, operations administrative assistant, cable locator, customer service representative, and customer service representative lead; excluding all other employees and supervisors as defined in the National Labor Relations Act.

WE WILL provide the Union with the information that it requested from us on or after November 6, 2015, and thereafter, consisting of bargaining unit employees' home addresses and home telephone numbers.

WE WILL in any like or related manner interfere with your rights under Section 7 of the Act.

POUDRE VALLEY RURAL ELECTRIC ASSOCIATION, INC.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/27-CA-167119 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

